

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

JOHN MITCHELL

v. **UNITED STATES OF AMERICA, et al.**

THE HONORABLE JOHN W. SEDWICK

CASE NO. 3:05-cv-00264 (JWS)

PROCEEDINGS: **ORDER FROM CHAMBERS**

Date: April 19, 2007

At docket 24, defendants moved for dismissal of, or summary judgment on, plaintiff Mitchell's sole remaining claim against them, his ADEA claim. As defendants pointed out, the only proper defendant for that claim is the Secretary of the Army. *Romain v. Shear*, 789 F.2d 1416, 1418 (9th Cir. 1986). The Secretary is not a defendant. Plaintiff essentially concedes in his opposition that the only correct defendant is the Secretary, but urges that the omission in his complaint can be corrected by an amended complaint naming the Secretary as a defendant. Moreover, plaintiff contends that a claim against the Secretary would relate back to the time the original complaint was filed pursuant to Fed. R. Civ. P. 15(c). However, no motion to amend has been filed, much less granted. Thus, the motion at docket 24 is being litigated by the wrong parties.

Given the circumstances, the oral argument on the motion at docket 24 is unnecessary and is hereby **VACATED**, the motion at docket 24 is **GRANTED**, and plaintiff is given leave to amend his complaint within **20 days from the date of this order** to name the correct defendant for his ADEA claim.

If there is future motion practice with respect to the ADEA claim, the court would expect all parties to file better briefs and not simply recycle without improvement the briefs filed relating to the motion at docket 24.
